

Application No. 10/620,102

December 3, 2004

Amendment responsive to Office Action of September 3, 2004

Remarks

I. Prosecution History

Claims 1-28 were filed in the present application. All pending Claims 1 – 28 stand rejected by the Examiner. In the first official action, dated , 9/03/04, claims 1-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,901,697 to Oliver, Jr. et al ("*Oliver*") in view of U.S. Patent No. 6,006,743 to Shimek et al. ("*Shimek*"), and claims 19-27 and 29 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Oliver* in view of *Shimek* as applied to claims 1-18 and 28, and further in view of U.S. Patent No. 3,027,888 to Fault et al. ("*Fault*"). On 12/03/2004, Applicant submitted a response to the official action and amended Claims 1-29.

In the second official action, made Final, claims 1-29 stand rejected under 35 U.S.C. 112, first paragraph as failing to comply with written description requirements; claims 1-18 and 28 stand rejected under 35 U.S.C. 103(a) as again being unpatentable over *Oliver* in view of *Shimek*; and claims 19-27 and 29 stand rejected under 35 U.S.C. 103(a) as again being unpatentable over *Oliver* in view of *Shimek*, and further in view of *Fault* and admitted prior art.

Applicant submits this paper in response to the second official action. Applicant has cancelled claims 3, 6, 10-11, 13, 16, 20, 22, 24-25, and 27-29. Claims 1-2, 4-5, 7-9, 12, 14-15, 17-19, 21, 23, and 26 remain pending and are presented for further examination.

II. Summary of Embodiment

In accordance with the preferred embodiment, applicant describes and claims a portable artificial campfire device which operates only on pressurized or compressed gas is portable and a burner element that can be formed for use in existing campground facilities such as pre-fabricated campfire rings and

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manmade campfire rings. Applicant's burner element can be formed into a spiral shape. The steel tubing comprising the burner element comprises a malleable material that can be physically formed and has a plurality of orifices of varying density dispersed throughout the surface of the burner element. The burner element can be formed for easy adaptation to and use with existing campfire rings because of its flexibility. In addition, a plurality of orifices are densely formed in areas of the burner element that can be referred to as a hot area. A hot area is ideally suited to enable cooking over the burner element. Other areas of the burner element wherein orifices are not as densely formed as orifices in the hot area are merely provided for the production of aesthetic flames emanating from the burner element. The orifices formed in the burner element are formed so that they are generally facing in an upwardly direction from the burner element, away from the ground or earth where it would lie when deployed. The artificial campfire is adapted for use with pressurized or compressed gas such as propane and for deployment as a replacement to coal and wood as fuel typically used for fire contained within physical campground facilities.

III. Rejection of Claims 1-18 and 28 under 35 U.S.C. 103(a) as unpatentable over Oliver in view of Shimek.

Claims 1-18 and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,901,697 to Oliver, Jr. et al ("*Oliver*") in view of U.S. Patent No. 6,006,743 to Shimek et al. ("*Shimek*"). Following Applicant's current cancellation of claims 3, 6, 10-11, 13, 16 and 28, only claims 1-2, 4-5, 7-9, 12, 14-15 and 17 remain for response as part of the rejection and are presented for further examination.

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Requirements for *Prima Facie* Obviousness

The obligation of the examiner to go forward and produce reasoning and evidence in support of obviousness is clearly defined at M.P.E.P. §2142:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

M.P.E.P. §2143 sets out the three basic criteria that a patent examiner must satisfy to establish a *prima facie* case of obviousness:

1. some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
2. a reasonable expectation of success; and
3. the teaching or suggestion of all the claim limitations by the prior art reference (or references when combined).

It follows that in the absence of such a *prima facie* showing of obviousness by the examiner (assuming there are no objections or other grounds for rejection), an applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443 (Fed. Cir. 1992). Thus, in order to support an obviousness rejection, the Examiner is obliged to produce evidence compelling a conclusion that each of the three aforementioned basic criteria has been met.

Oliver was disclosed by Applicant to the USPTO in the background section of his patent application and was distinguished for its excessive use of hardware to accomplish a portable artificial campfire. Self-contained devices

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such as that described in *Oliver* use compressed gas, such as bottled propane, can be used as cooking devices in the great outdoors. Portable barbeques or cook stoves, however, fail to offer campers, hikers and outdoor enthusiasts the campfire experience. Although *Oliver* describes an artificial campfire device that can operate on pressurized gas, it still presents a system consisting of several components (e.g., a base receptacle, logs, a fuel tank, and a burner member) that add weight and space requirements to a camper's payload. An artificial system such as that described by *Oliver* would not likely be used by most backpackers or hikers who already have a number of necessary provisions that must be physically transported on their backs during an outdoor adventure.

Oliver also describes shortfalls of the prior art being that the prior art devices do not utilize artificial or refractory logs, are typically permanent installations and are not easily adaptable for outdoor use. *Oliver*, therefore, teaches away from Applicant's invention, which does not depend on refractory logs and is designed for use in existing installations.

Shimek also describes a gas burner unit that describes the need of more than a burner element for its use. *Shimek* hardware includes a base unit and a top ceramic fiber unit. The manifold has a three dimensional contoured surface. A pattern of burner jets extend through the ceramic fiber top into a gas manifold to create a gas flame pattern. *Shimek*, therefore, also teaches away from Applicant's invention.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure. The Applicant respectfully asserts that the rejection of remaining claims 1-2, 4-5, 7-9, 12, 14-15 and 17 fails under the first and third prongs of the obviousness test because, in view of the objectives and teachings

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of the references, there is no motivation or suggestion to combine them to arrive at a portable artificial campfire device including a burner element that comprised of steel tubing adapted for physical formation into shapes suitable for use in existing campfire rings, said burner element. Neither *Oliver* nor *Shimek* teach a burner element that comprised of steel tubing adapted for physical formation into shapes suitable for use in existing campfire rings, said burner element that also has a plurality of orifices of varying density dispersed throughout the surface of the burner element and which operates only on pressurized or compressed gas, is portable and can be formed for use in existing campground facilities such as per-fabricated campfire rings and manmade campfire rings. Therefore parts I and III of the three basic criteria that a patent examiner must satisfy to establish a *prima facie* case of obviousness are not satisfied under the rejection. Applicant therefore, traverses the rejection in light of his remarks and respectfully requests reconsideration of claims 1-18 and 28.

III. Rejection of Claims 19-27 and 29 under 35 U.S.C. 103(a) as unpatentable over Oliver in view of Shimek, and further in view of Fault.

Claims 18-27 and 29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,901,697 to Oliver, Jr. et al ("*Oliver*") in view of U.S. Patent No. 6,006,743 to Shimek et al. ("*Shimek*"), and further in view of U.S. Patent No. 3,027,888 to Fault et al. ("*Fault*"). *Fault* was cited for teaching a burner element formed as a spirally wound tube. The Examiner states that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burner element of *Oliver* to be spiral shaped as taught by *Fault*.

Claims 20, 22, 24-25, and 27-29 have been cancelled by Applicant; therefore only claims 18, 21, 23, and 26 remain for purposes of a response.

As previously discussed with regards to *Oliver* and *Shimek*, *Oliver* and *Shimek* teaches away from Applicant's invention because they require more hardware than Applicants invention, and *Oliver* specifically minimizes any system that does not depend on refractory logs and is used in typically permanent installations. Furthermore, neither *Oliver* or *Shimek* teach a burner element comprised of steel tubing adapted for physical formation into shapes suitable for use in existing campfire rings, said burner element.

Fault teaches a spiral shaped burner element, but does not teach that the burner element that is comprised of steel tubing adapted for physical formation into shapes suitable for use in existing campfire rings, said burner element as claimed by Applicant, and has a plurality of orifices of varying density dispersed throughout the surface of the burner element. The *Fault* burner element is not taught as being comprised of steel tubing adapted for physical formation into shapes suitable for use in existing campfire rings. *Fault* does not teach or suggest a burner element that can be physically manipulated for use with existing facilities.

The Applicant maintains that the rejection of claim 18 fails under the first and third prongs of the obviousness test because, in view of the objectives and teachings of the references including *Fault*, there is no motivation or suggestion to combine them to arrive at a portable artificial campfire device comprised of steel tubing adapted for physical formation into shapes suitable for use in existing campfire rings and which operates only on pressurized or compressed gas, is portable and has a spiral shaped burner element that can be formed for use in existing campground facilities such as per-fabricated campfire rings and manmade campfire rings. Furthermore, *Oliver* and *Shimek* and *Fault* fail to teach every element of the claimed invention. Neither *Oliver* or *Shimek* and *Fault* teach a burner element comprised of steel tubing adapted for physical formation into

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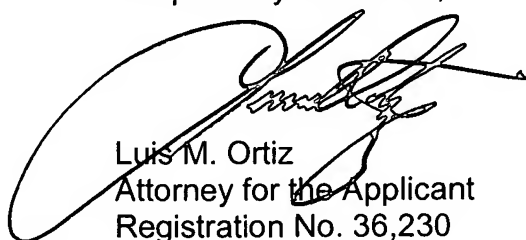
shapes suitable for use in existing campfire rings that has a plurality of orifices of varying density dispersed throughout the surface of the adjustable spiral shaped burner element. Therefore parts I and III of the three basic criteria that a patent examiner must satisfy to establish a *prima facie* case of obviousness are not satisfied under the rejection. Applicant therefore, traverses the rejection in light of his remarks and respectfully requests reconsideration of claim 18.

IV. Conclusion

In view of the foregoing remarks, the Applicant submits that Claims 1-2, 4-5, 7-9, 12, 14-15, 17-19, 21, 23, and 26 are patentably distinct over the references and are in allowable form. Accordingly, the Applicant earnestly solicit the favorable consideration of their application, and respectfully request that it be passed to issue in its present condition.

Should the Examiner discern any remaining impediment to the prompt allowance of the aforementioned claims that might be resolved or overcome with the aid a telephone conference, he is cordially invited to call the undersigned at the telephone number set out below.

Respectfully submitted,



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